

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 194

This is an advisory opinion in response to a request for the Ethics Commission [Commission] to determine whether an employee, Mr. X, violated the City's standards of conduct as a result of his actions concerning a friend, Ms. Y.

In general, the Commission believes that Mr. X committed one count of violating Section 11-103, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH], relating to public disclosure of personal interests, and one count of violating Section 11-104, RCH, relating to fair and equal treatment.

The Commission bases this opinion on the following facts, which include a summary of admissions that Mr. X made to his department head.

Since (date) Mr. X has been an employee of Department Z. Department Z has the authority to enforce a category of laws.

On (date), Jane Doe filed a complaint with Department Z concerning Ms. Y. Ms. Y is a friend of Mr. X. Sometime between (date) and (date), Ms. Y and Ms. Doe discussed a settlement of Ms. Doe's complaint. On (date), Mr. X and a coworker went to Business J where Ms. Doe worked. Business J is partially under the jurisdiction of Department Z. Both Mr. X and his coworker talked to Ms. Doe about her complaint against Ms. Y. Either Mr. X or his coworker gave Ms. Doe a paper to sign. The paper was a statement, which by signing Ms. Doe withdrew her complaint against Ms. Y.

The questions presented are 1) whether an employee violates Section 11-103, RCH, by failing to file a public disclosure of a personal relationship with a person who is directly concerned with an official action of the employee's department, and 2) whether an employee violates Section 11-104, RCH, by inducing a complainant to withdraw a complaint against a friend.

In response to the first question, the general rule appears in Section 11-103, RCH, which states:

An elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the

council who knows he has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

This section requires City employees to disclose potential conflicts of interest to their appointing authorities and to this Commission each time such conflicts arise.

In this case, after Mr. X and Ms. Y became friends, Mr. X should have made disclosures in accordance with Section 11-103, RCH, each time a matter concerning Ms. Y came before his department for official action. Mr. X did not comply with this law because he did not file any such disclosures with this Commission. In response to such disclosures, this Commission would have advised him to abstain from any official action concerning Ms. Y. In the absence of such disclosures and advice from this Commission, Mr. X may have repeatedly violated Section 11-103. However, this Commission has not attempted to determine when Mr. X and Ms. Y became friends or to count the number of times after that date matters concerning Ms. Y came before Department Z for official action. At this time, this Commission restricts itself to its conclusion that Mr. X violated Section 11-103, RCH, by failing to disclose his friendship with Ms. Y when Ms. Doe filed her complaint against Ms. Y.

In response to the second question, the general rule appears in Section 11-104, RCH, which states:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

In this case, the general rule requires Mr. X to treat all persons or businesses who have business before Department Z fairly and equally and not to secure special treatment for any-one, such as Ms. Y. He did not comply with this rule. Instead he pressured Ms. Doe to withdraw the complaint against Ms. Y. He and the coworker personally met with Ms. Doe at Business J, and one of the two gave Ms. Doe the withdrawal to sign. Meeting for this purpose with a person who filed a complaint against a friend is alone sufficient to constitute a violation of Section 11-104, RCH. However, Mr. X's violation is an aggravated case. He met Ms. Doe at her place of work and therefore to her possible embarrassment with her employer. Because the employer was Business J, a business partially under Department Z's authority, Mr. X may have also intended his visit to be an unspoken threat to the employer and therefore to the employee, Ms. Doe. The presence of two of Department Z's employees at a business under Department Z's authority is likely to affect any such business. Therefore, Mr. X committed an aggravated violation of Section 11-104.

In conclusion, the Commission has been asked to determine whether Mr. X violated the City's standards of conduct as a result of his actions concerning a friend, Ms. Y. The Commission believes Mr. X committed one count of violating Section 11-103, RCH, by failing to file a written disclosure with this Commission when Ms. Doe filed her complaint against Ms. Y. At this time, this Commission does not seek to establish additional counts of violations by counting

the number of times matters concerning Ms. Y came before the Department X after Mr. X and Ms. Y became friends. The Commission also believes Mr. X committed an aggravated violation of Section 11-104, RCH, by meeting Ms. Doe at her place of work, a business under Department Z's authority to enforce the law. In light of these two violations, the Commission recommends that Department Z take disciplinary action it deems appropriate against Mr. X.

Dated: September 28, 1988

JANE B. FELLMETH
Chair, Ethics Commission